

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CH

FERNANDO FONTANEZ

No. 07 C 6391

"Honorable"

JUDGE WILLIAM T. HART

FILED

DEPARTMENT OF HOMELAND SECURITY AGENT
JEFFREY DABE

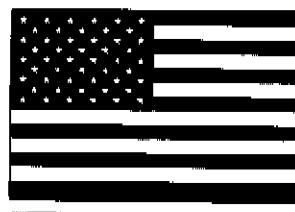
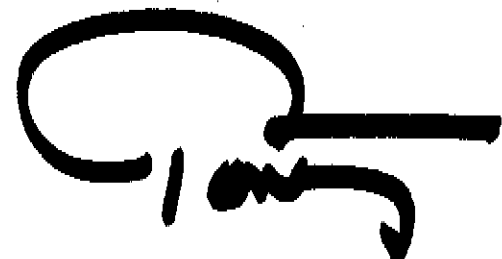
J.N

NOV 8 2007

NOV. 30, 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTMOTION TO ADD PARTY DEFENDANT IN CIVIL ACTIONNow Comes "FERNANDO FONTANEZ" PLAINTIFF RESPECTFULLY REQUESTING

THAT THIS HONORABLE COURT AND HONORABLE JUDGE HART RECONSIDER
MINUTE ORDER DISMISSING "THE DEPARTMENT OF HOMELAND SECURITY" AS DEFENDANTS
AND ADD THEM AS; DEFENDANT "JEFFREY DABE" ACTED WHILE IN HIS OFFICIAL
CAPACITY WHILE WORKING AS AN AGENT FOR "THE DEPARTMENT OF HOMELAND SECURITY"
AND PREVIOUSLY IN CASE# 06C7056 "THE HONORABLE JUDGE GEORGE M.
MANOVICH" DID NOT DISMISS THE DEPARTMENT OF HOMELAND SECURITY ALLOWING
FOR THE ATTORNEY GENERAL OF THE UNITED STATES TO BE SERVED. THE U.S. MARSHAL
SERVICE HAS NOTIFIED ME THAT DUE TO YOUR MINUTE ORDER DISMISSING DEFENDANTS
OF NOVEMBER 20TH 2007; THEY ARE UNABLE TO SERVE THE UNITED STATES ATTORNEY
THUS CREATING A HAMPER TO PURSUE DEFENDANT JEFFREY DABE IN HIS OFFICIAL
CAPACITY AND MAKING HIM AND THE DEPARTMENT OF HOMELAND SECURITY VISCERALLY
RESPONSIBLE FOR VIOLATING SECTION 42 + 43 USC 1983. ALSO DIRECT
CLERK TO FORWARD COPIES OF ORIGINAL COMPLAINT AND U.S. MARSHAL SERVICE TO
SERVE THE UNITED STATES ATTORNEY GENERAL.

FERNANDO FONTANEZ P.O. BOX 578941 CHICAGO, ILLINOIS 60657

Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	George M. Marovich	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 7056	DATE	2/1/2007
CASE TITLE	Fontanez v. Dabe		

DOCKET ENTRY TEXT:

Plaintiff Fernando Fontanez's petition to proceed *in forma pauperis* [4] is granted. The clerk's office is directed to issue summons and forward the summons and a copy of the complaint to the U.S. Marshals Service in order to effectuate service on defendant. Plaintiff Fontanez's motion for appointment of counsel [5] is denied.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Petitioner Fernando Fontanez ("Fontanez") seeks leave to file *in forma pauperis* his complaint against Jeffrey Dabe ("Dabe"), an individual alleged to be an agent employed by the United States Department of Homeland Security. Fontanez also moves for appointment of counsel.

Under 28 U.S.C. § 1915, when determining whether a petitioner may proceed *in forma pauperis*, the Court engages in a two-step analysis. First, the Court examines whether the petitioner has sufficiently demonstrated that he is impoverished within the meaning of the statute. *Nietzke v. Williams*, 490 U.S. 319, 324 (1989). Second, the Court determines whether the complaint is frivolous. *Denton v. Hernandez*, 540 U.S. 25, 31 (1992); *Nietzke*, 490 U.S. at 324. First, the Court finds that Fontanez has sufficiently demonstrated that he is impoverished within the meaning of the statute. In his affidavit, Fontanez states that he has no assets and has no income aside from \$155 per month in food stamps.

Second, the Court has reviewed Fontanez's complaint. Most of the allegations in Fontanez's complaint are plainly frivolous. He includes, however, some allegations which, while not stating a claim upon which relief may be granted, are not frivolous. According to the attachments to Fontanez's complaint, Dabe is a U.S. Marshal. Dabe arrested Fontanez in June 2006 so that he could be questioned about possessing letters that were threatening to judges. Fontanez alleges that Dabe falsely arrested him in violation of 42 U.S.C. § 1983. Although any such claim would probably have to be brought as a *Bivens* action instead of a § 1983 claim and would require allegations that his arrest was without probable cause, Fontanez's claim does not appear to be frivolous. Thus, the Court grants Fontanez leave to file his complaint *in forma pauperis*.

The Court notes, however, that it is aware that in the days and weeks surrounding the filing of this suit, Fontanez filed at least a dozen other suits in the United States District Court for the Northern District of

STATEMENT

Illinois. Many of those suits have been dismissed as frivolous, and the Executive Committee entered an order restricting Fontanez's ability to file new suits. That order does not affect this suit. The Court notes, however, that should it become clear at any point that this case is being pursued maliciously, the Court will not hesitate to dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

Finally, Fontanez moves for appointment of counsel. The Seventh Circuit has explained that "indigent civil litigants have no constitutional or statutory right to be represented by counsel in federal court." *Jackson v. County of McLean*, 953 F.2d 1070, 1071 (7th Cir. 1992). The Court may, in its discretion, request counsel to represent an indigent litigant if the individual has made reasonable efforts to secure counsel and if the presence of counsel seems likely to make a difference in the outcome. *Farmer v. Haas*, 990 F.2d 319, 321-322 (7th Cir. 1993). Here, Fontanez failed to answer the question in his motion for appointment of counsel that asked him to declare the efforts he had made to retain counsel. Because the Court is not aware of any reasonable attempts by Fontanez to secure counsel, the Court denies Fontanez's motion for appointment of counsel. (This denial is without prejudice, and Fontanez is free to file a new motion for appointment of counsel.)

Accordingly, the Court grants Fontanez's petition to proceed *in forma pauperis*. The Court directs the clerk's office to issue summons and forward the summons and a copy of the complaint to the U.S. Marshals Service in order to effectuate service on defendant. The Court denies his motion for appointment of counsel.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF Fernando Fontenaz	COURT CASE NUMBER 06-C-7056
DEFENDANT Agent Jeffrey Dabe, et al.	TYPE OF PROCESS Summons and Complaint
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Agent Jeffrey Dabe	
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) U.S. DEPT OF HOMELAND SECURITY c/o NAVAL Security STATION NEBRASKA AVENUE WASHINGTON D.C.	

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW: Fernando Fontenaz P.O. Box 578941 Chicago, IL 60657		Number of process to be served with this Form - 285 1
Number of parties to be served in this case 3		Check for service on U.S.A. X

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

THIS HONORABLE AGENT SERVED ME I.D. OF U.S. HOMELAND SECURITY - I BELIEVE TO TAKE HIM WOULD BE OUT OF HEADQUARTERS D.C. IT IS NOT CLEAR IF HE'S ASSIGNED TO CHICAGO AREA. INVESTIGATION SHOWS HE IS NOT A U.S. MARSHAL, THANK YOU FOR YOUR QUICK CONTACT ME: 3838 N. BROADWAY #306 CHICAGO 60641

Signature of Attorney or other Originator requesting service on behalf of: **[Signature]** PLAINTIFF ☒ DEFENDANT ☐ TELEPHONE NUMBER **NONE** DATE **2-12-07**

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin 24	District to Serve 24	Signature of Authorized USMS Deputy or Clerk RHW	Date 2/12/07
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I hereby certify and return that I ☐ have personally served, ☒ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode:
Address (complete only if different than shown above)	Date of Service 2/23/07 Time am
	Signature of RHW

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: **Certified mail mailed with Waiver of Service of Summons on February 12, 2007. Certified mail Number: 7005 1160 0001 3027 8777.**

See Attached

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

U.S. Dept. of Homeland Security
Washington, D.C. 20528

ATTN: Legal Dept.

CASE: 06-C-7056

2. Article Number

(Transfer from service label)

7005 1160 0001 3027 8777

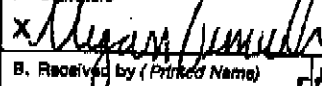
PS Form 3811, February 2004

Domestic Return Receipt

102693-02-44-15

COMPLETE THIS SECTION ON DELIVERY

A. Signature


☐ Agent
☐ Address

B. Received by (Printed Name)

C. Date of Delivery

FEB 23 2007

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

E. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

FILED

MAR 02 2007 WH

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

* Sender: Please print your name, address, and ZIP+4 in this box *

UNITED STATES MARSHALS SERVICE
NORTHERN DISTRICT OF ILLINOIS
219 SOUTH DEARBORN STREET - ROOM 2444
CHICAGO, ILLINOIS 60604

ATTN: Civil Division

CASE: 06-C-7056



THIEL

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form.

PLAINTIFF Fernando Fontanez	COURT CASE NUMBER 06-C-7056
DEFENDANT Agent Jeffrey Dabe, et al.	TYPE OF PROCESS Summons and Complaint
SERVE →	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Patrick Fitzgerald, U.S. Attorney, U.S. attorney's Office
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 219 South Dearborn Street - 5th Floor - Chicago, IL 60604

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Fernando Fontanez
P.O. Box 578941
Chicago, IL 60659

Number of process to be served with this Form - 285	1
Number of parties to be served in this case	3
Check for service on U.S.A.	X

FILED

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

MAR 02 2007 WH
03-02-07

MICHAEL W. DOBBING
CLERK, U.S. DISTRICT COURT

Fold

Signature of Attorney or other Originator requesting service on behalf of:

☒ PLAINTIFF
☐ DEFENDANT

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 3	District of Origin 24 No.	District to Serve 24 No.	Signature of Authorized USMS Deputy or Clerk RHW	Date 2/12/07
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I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

Joclyn Murawski / Admin Asst.

Address (complete only if different than shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service
2/12/07

Time **1025** am
 pm

Signature of U.S. Marshal or Deputy

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

1 DUSM / 1 hour / 0 milesPRIOR EDITIONS
MAY BE USED

1. CLERK OF THE COURT

FORM USM-285 (Rev. 12/15/80)

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF Fernando Fontanez		COURT CASE NUMBER 06-C-7056	
DEFENDANT Agent Jeffrey Daba, et al.		TYPE OF PROCESS WAIVER Summons and Complaint	
SERVE ➡ AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Attorney General, Dept. of Justice		
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 950 Pennsylvania Avenue, NW Washington, D.C. 20530		
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:		Number of process to be served with this Form - 285	1
<div style="border: 1px solid black; padding: 5px;"> Fernando Fontanez P.O. Box 578941 Chicago, IL 60657 </div>		Number of parties to be served in this case	3
		Check for service on U.S.A.	X

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

FILED**MAR - 5 2007****03-05-07****MICHAEL W. DOBINS****CLERK, U.S. DISTRICT COURT**

Signature of Attorney or other Originator requesting service on behalf of:

☒ PLAINTIFF☐ DEFENDANT

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 2	District of Origin No. 24	District to Serve No. 24	Signature of Authorized USMS Deputy or Clerk	Date 2/12/07
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I hereby certify and return that I ☒ have personally served, ☒ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service

Time

2/22/07

pm

Signature of U.S. Marshal or Deputy

RAC

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

***Certified mail mailed with Waiver of Service of Summons on February 12, 2007.
 Certified mail Number: 7005 1160 0001 3027 8722

*"See Attached"*PRIOR EDITIONS
MAY BE USED

1. CLERK OF THE COURT

FORM USM-285 (Rev. 12/15/00)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20530

CASE: 06-C-7056

2. Article Number

(Transfer from service label)

7005 1160 0001 3027 8722

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

FEB 9 2007

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

UNITED STATES MARSHALS SERVICE
NORTHERN DISTRICT OF ILLINOIS
219 SOUTH DEARBORN STREET - ROOM 2444
CHICAGO, ILLINOIS 60604

ATTN: Civil Division

CASE: 06-C-7056

Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	William T. Hart	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	07 C 6391	DATE	11/20/2007
CASE TITLE	Fernando Fontanez vs. Department of Homeland Security, et al.		

DOCKET ENTRY TEXT

Plaintiff's motion for leave to proceed in forma pauperis [4] is granted. Plaintiff's motion for appointment of counsel [5] is denied. Defendants Department of Homeland Security and Gus P. Coldebella are dismissed as a party defendants.

Docketing to mail notices.

Courtroom Deputy Initials:	CW
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U.S. Department of Justice

United States marshals Service

Northern District of Illinois

219 South Dearborn St. Rm. 2444
Chicago, IL 60604
312-353-5290

November 27, 2007

Fernando Fontanez
P.O. Box 578941
Chicago, IL 60657

RETURN TO CIVIL DESK

COURT CASE NUMBER -07C6391

Your forms (s) are being returned to you for the following reason (s) checked. Please complete and return within **TEN (10) days** from the date of this letter. We can not process your request without the requested information.

_____ You have not filed your Summons and Complaint with the Clerk of the Court PRIOR to completing the USM-285 Form.
(To file your Summons and Complaint Contact the Clerk of the Court at 312-435-5691 219 S. Dearborn St. on the 20th floor)

_____ You have not completed a USM-285 Form (s) (Process Receipt and Return) for each defendant that you would like served. Enclosed is a USM-285 Form (s) with a return self-addressed stamped envelope. DO NOT REMOVE THE CARBONS FROM THE USM-285 FORM(S).

X _____ You did not include one or more of the following on the USM-285 Form:
_____ The defendant (s) (the person who will be served) first and last name.
X _____ The defendant (s) (the person who will be served) mailing address with zip code and apartment number if serving at a place of business include department.
(NO P.O. BOX ADDRESS ACCEPTED)

* We are unable to serve the U.S. attorney & Attorney General because the Department of Homeland Security has been dismissed as defendants.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form.

PLAINTIFF Fernando Fontanez	COURT CASE NUMBER 07C6391
DEFENDANT Department of Homeland Security, et al.	TYPE OF PROCESS S/C
SERVE ➡ AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Agent Jeffrey Dabe, C/O Department of Homeland Security ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) Department of homeland Security, Washington, DC 20528

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Fernando Fontanez
P.O. Box 578941
Chicago, IL 60657

Number of process to be served with this Form - 285

Number of parties to be served in this case

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

please provide the department + address.

AGENT JEFFREY DABE C/O DEPT OF HOMELAND SECURITY
3801 NEBRASKA AVENUE WASHINGTON, D.C. 20528

202-447-3710 call MEGAN

GEMUNDOR for Receipt

ATTN: MEGAN GEMUNDOR

Signature of Attorney or other Originator requesting service on behalf of:

☒ PLAINTIFF
☐ DEFENDANT

TELEPHONE NUMBER

DATE

11-27-07

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 1 of 3	District of Origin No. 24	District to Serve No. 24	Signature of Authorized USMS Deputy or Clerk ID	Date 11-27-07
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I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service Time **am**

pm

Signature of U.S. Marshal or Deputy

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: